

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.4708 of 2014 (O&M) with
Cross objections No.235-CII of 2014
Date of Decision : 26.07.2022**

Bharti AXA General Insurance Company Limited

....Appellant

Versus

Usha and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Rajni Rohilla, Advocate for
Mr. Sanjeev Goyal, Advocate
for the appellant.

Mr. Ram K. Saini, Advocate
for respondents No.1 to 4/cross-objectors.

PANKAJ JAIN, J.

This is an appeal filed by the Insurer against the Award dated 5th of April, 2014 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal').

2. Claim petition was filed under Sections 166/140/141 of the Motor Vehicles Act, 1988 by the legal heirs of Prem Chand, who died in a motor-vehicular accident dated 7th May, 2013.

3. As per the claim petition, deceased was travelling on Moped when the offending vehicle driven by respondent No.5 in a rash and negligent manner came from behind and dashed into the moped. Deceased - Prem Chand succumbed to injuries in hospital.

4. On the basis of the pleadings of the parties, the following

issues were framed by the Tribunal :-

1. *Whether the accident resulting into death of Prem Chand took place due to rash and negligent driving of respondent No.1, while driving Car No.HR-70B-6128? OPP*
2. *Whether claimants are entitled to the compensation as prayed for from the respondents? OPP*
3. *Whether the vehicle in question was being driven in violation of terms and conditions of insurance policy? OPR-2*
4. *Relief.”*

5. Ld. Counsel for the appellant has argued that the negligence of the offending vehicle could not be proved yet the Tribunal erred in returning finding on Issue No.1 in favour of the claimants. It has been further asserted that there was no evidence on record to prove that the deceased was working as Mason. Tribunal further erred in granting 30% future prospects even though the age of the deceased was 42 years at the time of death.

6. Ld. Counsel for the appellant further submits that even the amounts awarded under the conventional heads i.e. Rs.25,000/- for funeral expenses and Rs.1,00,000/- on account of loss of consortium, are exorbitant.

7. Per contra, Ld. Counsel for the claimants/respondents No.1 to 4, submits that the Tribunal after analyzing the evidence on record has rightly concluded issue w.r.t. the negligence in favour of the claimants. It

has been further asserted that the claimants have also filed cross-objections as the multiplier of 14 needs to be enhanced to 16 and they seek modification of the award accordingly.

8. I have heard Ld. Counsel for the parties and with their able assistance have gone through the records of the case.

9. In the considered opinion of this Court, Ld. Tribunal has rightly observed that respondents have failed to bring on record any evidence to refute the claim of the claimants w.r.t. the negligence. There is overwhelming evidence on record which goes on to prove that the motor-vehicular accident was caused due to rash and negligent driving of respondent No.5. The claimants examined Ravi Kumar, who is stated to be an eye-witness to the accident as PW-1. Copy of the Post-Mortem Report has been proved as Exhibit P-1. Copy of report filed under Section 173 Cr.P.C. and the Chargesheet against respondent No.5 have also been proved on record as Exhibit P-2 and Exhibit P-3, respectively.

10. Ld. Counsel for the appellant has not been able to show any evidence on record to rebut the said evidence, nor is she in position to show any circumstance which would warrant interference in the finding recorded by Tribunal on Issue No.1.

11. Tribunal has rightly assessed the income of the deceased Prem Chand as Rs.6,000/- as there is no evidence on record to show that he was working as Mason, as alleged. As per law laid down by the Supreme Court in 'National Insurance Company Limited vs. Pranay Sethi and others',

(2017) 16 SCC 680, an addition on account of future prospects has to be reduced from 30% to 25%. Keeping in view the number of the claimants, deduction of 1/4th has been rightly applied. Multiplier of 14 is also as per law laid down by 'Smt. Sarla Verma & others vs. Delhi Transport Corporation & another' (2009) 6 SCC 121. The claimants are further entitled for Rs.44,000/- each on account of loss of consortium. Rs.25,000/- granted for funeral expenses is reduced to Rs.15,000/-. Amount of Rs.15,000/- is granted for Loss of Estate as per law laid down in **Pranay Sethi's case** (supra).

12. As a sequel of the aforesaid discussion, the award passed by the Tribunal stands modified to the extent as stated herein above. The claimants/respondents No.1 to 4 are held entitled to the compensation as per the modified award along with the interest to be calculated @ 12% per annum as awarded by the Tribunal, from the date of filing of the claim petition till its actual realization.

13. Needless to say that any amount already paid to the claimants/respondents No.1 to 4 shall be set off.

14. The instant appeal as well as cross-objections are decided accordingly.

July 26, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No